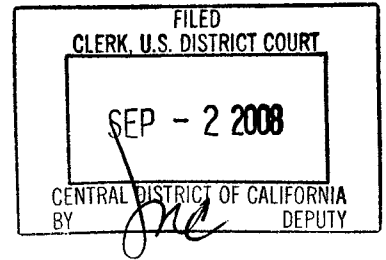


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JAMES L. WILLIAMS,
Petitioner,
v.
BEN CURRY,
Respondent.

Case No. CV 08-05107 JSL (AN)
MEMORANDUM AND ORDER
SUMMARILY DISMISSING
UNAUTHORIZED SECOND OR
SUCCESSIVE PETITION FOR WRIT
OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY

I. Background

On August 5, 2008, petitioner James L. Williams ("Petitioner"), a state prisoner proceeding *pro se*, filed the pending petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 ("Petition") seeking relief from his current state custody arising from his underlying 1996 conviction for burglary, grand theft, and credit card fraud offenses, and his related prison sentence of twenty-six years, four months to life, that he sustained after a jury trial in the Los Angeles County Superior Court (case no. LA021463) ("1996 Conviction and Sentence"). (Petition at 2.)

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1 The Court finds it lacks jurisdiction to consider the pending Petition, and that it
2 must be dismissed, because it is an unauthorized second or successive petition.

3 Specifically, the Court's records^{1/} establish the pending Petition constitutes
4 Petitioner's *second* attempt to obtain federal habeas corpus relief from his current state
5 custody arising from his 1996 Conviction and Sentence. On January 3, 2000, Petitioner
6 filed his first petition with this Court seeking federal habeas review of his 1996
7 Conviction and Sentence on six grounds. (*James Lamonte Williams v. Larry Small,*
8 *Warden*, case no. CV 00-00028 JSL (AN) (C.D. Cal.) ("*Williams I*"). After finding all
9 six grounds lacked merit, the Court entered its judgment dismissing *Williams I* with
10 prejudice. (*Williams I*, Report and Recommendation (docket no. 26) and Judgment
11 entered 9/13/05 (docket no. 29).) Petitioner appealed the Court's judgment in *Williams*
12 *I* (docket no. 30) and requested a certificate of appealability ("COA") (docket no. 31),
13 however, both this Court and the Court of Appeals for the Ninth Circuit denied the COA.
14 (See Orders denying COA (docket nos. 32 and 36).) Petitioner has neither alleged nor
15 shown the Ninth Circuit has authorized him to file the pending Petition, and the records
16 of the Ninth Circuit also confirm that Petitioner has never sought and been granted such
17 an authorization.

18 II. Discussion

19 The United States Supreme Court recently explained:

20 The Antiterrorism and Effective Death Penalty Act of
21 1996 (AEDPA) established a stringent set of procedures that
22 a prisoner "in custody pursuant to the judgment of a State
23 court," 28 U.S.C. § 2254(a), must follow if he wishes to file a
24 "second or successive" habeas corpus application challenging
25 that custody, § 2244(b)(1). In pertinent part, before filing the
26 application in the district court, a prisoner "shall move in the

27 ^{1/} The Court takes judicial notice of its own records and files. Fed. R. Evid.
28 201(b)(2); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).

1 appropriate court of appeals for an order authorizing the
2 district court to consider the application.” § 2244(b)(3)(A).
3 A three-judge panel of the court of appeals may authorize the
4 filing of the second or successive application only if it
5 presents a claim not previously raised that satisfies one of the
6 two grounds articulated in § 2244(b)(2). § 2244(b)(3)(C);
7 *Gonzalez v. Crosby*, 545 U.S. 524, 529-530, 125 S.Ct. 2641,
8 162 L.Ed.2d 480 (2005); *see also Felker v. Turpin*, 518 U.S.
9 651, 656-657, 664, 116 S.Ct. 2333, 135 L.Ed.2d 827 (1996).
10 *Burton v. Stewart*, 549 U.S. 147, ---, 127 S. Ct. 793, 796-99 (2007). A petition
11 constitutes a second or successive petition that is subject to § 2244 (b)’s gate keeping
12 requirements where it contests the same custody imposed by the same state judgment of
13 conviction that was the subject of an earlier petition that raised claims that were
14 dismissed on the merits by the district court. *Burton*, 127 S.Ct. at 796-798. A district
15 court lacks jurisdiction to consider a second or successive petition, and must dismiss it,
16 if the appropriate circuit court has not authorized the petitioner to file a second or
17 successive petition. *Burton, id.*

18 In light of the foregoing authority, the Court finds the pending Petition is a second
19 or successive petition to the prior petition in *Williams I* that was dismissed on the merits
20 with prejudice. Petitioner’s state custody arising from his 1996 Conviction and
21 Sentence is the subject of both the pending Petition and the petition in *Williams I*. The
22 pending Petition raises two new sentencing error claims that do not satisfy either of the
23 two grounds in § 2244(b)(2). Moreover, Petitioner has neither sought or obtained
24 authorization from the Ninth Circuit to raise these new claims in a second or successive
25 petition filed with this Court. Accordingly, the Court finds it lacks jurisdiction to
26 consider the pending Petition, and must dismiss it, because it is an unauthorized second
27 or successive petition. § 2244(b)(2); *Burton, id.*

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III. Conclusion

For the reasons discussed above, the reference to the Magistrate Judge is vacated and the Petition is dismissed without prejudice. The Clerk is directed to enter the judgment dismissing the Petition. Any and all other pending motions are terminated.

IT IS SO ORDERED.

Dated: __August 27__, 2008

Spencer Letts

J. SPENCER LETTS
UNITED STATES DISTRICT JUDGE

Presented by:

/s/ ARTHUR NAKAZATO
Arthur Nakazato
United States Magistrate Judge